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Office of Patent Publication

SILVERBROOK RESEARCH PTY LTD  
393 DARLING STREET  
BALMAIN NSW 2-041 AU AUSTRALIA

In re Application of  
LAPSTUN, PAUL, et al  
Application No. 10/659,028  
Filed: September 11, 2003  
Attorney Docket No. IP34US

DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding Of Abandonment (under 37 CFR § 1.181) received in the United States Patent & Trademark Office (USPTO) on August 25, 2005.

The petition is **DISMISSED**. Any request for reconsideration of this decision, or as explained below, filing a petition seeking revival under 37 CFR § 1.137, must be filed within TWO MONTHS (2) from the mail date of this decision.

The above-identified application was held abandoned for applicant's failure to timely pay the issue fee and publication fee, as required in the Notice of Allowance and Fee(s) Due mailed August 8, 2005.

Petitioner states that the issue fee was paid on time. In support of this assertion Petitioner has submitted a copy of their FedEx Airway Bill, Issue Fee Transmittal and Check.

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

MPEP 503 (postcard receipt as prima facie evidence)  
Certificate of Mailing under 37 CFR 1.8(b)  
"Express Mail" Mailing under 37 CFR 1.10

MPEP 503 states the following:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO.

Unfortunately MPEP 503 is not applicable since there is no record of receipt of the Return Receipt Postcard, which if received in the Office would have been stamped (referred to as "Office Date" stamp) acknowledging receipt of the items identified thereon.

Provisions under 37 CFR 1.8(b) requires that the petitioner (1) promptly inform the Office of the previous timely mailing or transmission after becoming aware that the Office has no evidence of receipt of the correspondence, (2) supply copies of the previously mailed correspondence with certificate of mailing thereon, and (3) include a statement which attests to the previous timely mailing.

Unfortunately, correspondence received from foreign countries do not receive the benefits of 37 CFR 1.8.

37 CFR § 1.10 is not applicable since this procedure was not used.

The holding of abandonment cannot be withdrawn at this time.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website <http://www.uspto.gov>)

File a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b).

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidable* abandoned
- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned

Further correspondence with respect to the petition for revival under 37 CFR 1.137 should be directed to the Office Of Petition at 703-305-9282 or addressed as follows:

By mail: Commissioner for Patents  
P O Box 1450  
Mail Stop Petitions  
Alexandria, VA 22313-1450

Telephone inquiries concerning this decision may be directed to the undersigned at 703-308-9250 EXT 153.



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